

# HOUSE . . . . . No. 1373

By Mr. Petersen of Marblehead, petition of Douglas W. Petersen and others relative to reducing acid rain pollution. Environment, Natural Resources and Agriculture.

## The Commonwealth of Massachusetts

### PETITION OF:

Douglas W. Petersen                      Cory Atkins  
Anthony J. Verga

In the Year Two Thousand and Five.

AN ACT RELATIVE TO REDUCING ACID RAIN POLLUTION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1     SECTION 1. *Whereas*, the legislature finds that acid deposi-  
2     tion, commonly referred to as acid rain, in sensitive resource areas  
3     of the state degrades natural ecosystems, causes significant eco-  
4     nomic and environmental damage, including but not limited to,  
5     reduction in the economic productivity of lands, and undermines  
6     the public health;  
7     *Whereas*, the legislature finds that in the absence of federal  
8     action the state must act to safeguard public health and to protect  
9     its environment, economy and infrastructure from irreparable  
10    damage from acid deposition;  
11    *Whereas*, the legislature finds that market-based pollution  
12    allowance trading programs can reduce the overall cost of making  
13    pollution reductions but such allowance trading programs must be  
14    structured to achieve necessary environmental and public health  
15    goals;  
16    *Therefore*, it is the intent of the legislature to ensure that  
17    owners of electric generating facilities sited in Massachusetts  
18    make prudent revenue decisions regarding their participation in  
19    the federal allowance credit trading programs established pursuant  
20    to the Federal Clean Air Act; and

21 It is the intent of the legislature to encourage sales and trades of  
22 pollution allowance credits that are beneficial to the sensitive  
23 resource areas of the state and thus, to the people of the state of  
24 Massachusetts.

1 SECTION 2. Chapter 111 of the General Laws, as appearing in  
2 the 2002 Official Edition, is hereby amended by inserting after  
3 section 142N the following section:—

4 Section 142O. (a). As used in this section, the following words  
5 shall have the following meanings unless the context clearly  
6 requires otherwise:

7 “Acid Precipitation Source States” shall mean the following  
8 states: New Jersey, Pennsylvania, Maryland, Delaware, Virginia,  
9 North Carolina, Tennessee, West Virginia, Ohio, Michigan, Illi-  
10 nois, Kentucky, Indiana, Wisconsin, New York, Connecticut and  
11 Rhode Island.

12 “Department” shall mean the department of environmental pro-  
13 tection.

14 “Select Sulfur Dioxide Allowance Credit” shall mean any  
15 sulfur dioxide allowance credit issued to generating sources  
16 located within the boundaries of the state of Massachusetts.

17 “Sulfur Dioxide Allowance Credit” shall mean any sulfur  
18 dioxide credit issued to a generating source within the United  
19 States pursuant to the provisions of Title Four of the Federal  
20 Clean Air Act Amendments of 1990.

21 (b) Air Pollution Mitigation Offset.

22 The department shall assess an air pollution mitigation offset  
23 equal to any sum received by any utility corporation, person or  
24 entity entering into contracts or engaging in the sale or trade of  
25 select sulfur dioxide allowance credits for use in operations, per-  
26 mits or for maintaining compliance with sulfur dioxide emission  
27 requirements in acid precipitation source states, where such select  
28 sulfur dioxide allowance credits are found to have been trans-  
29 ferred to the allowance deductions reserve account by a generating  
30 source located in an acid precipitation source state.

31 Any utility corporation, person or entity entering into contracts  
32 or engaging in the sale or trade of any select sulfur dioxide  
33 allowance credits shall provide the department with written notice  
34 of any select sulfur dioxide allowance transaction within five

35 business days of such transaction. Such notice shall include the  
36 purchase price, and shall provide the department a copy of the  
37 allowance transfer form of the United States Environmental  
38 Agency upon the issuance and/or signing of said form relating to  
39 the sale, exchange or trade by the utility corporation, person or  
40 entity, its subsidiaries, agents, employees, successors and assigns  
41 of select sulfur dioxide allowance credits.

42 The department will annually review information contained in  
43 the sulfur dioxide allowance tracking database operated by the  
44 United States Environmental Protection Agency for select sulfur  
45 dioxide allowances as identified by their unique serial number.

46 Any moneys collected as an air pollution mitigation offset pur-  
47 suant to this subdivision shall be deposited in the air pollution  
48 mitigation fund administered by the department of environmental  
49 protection.

50 (c) Exemptions.

51 The department shall produce by rule or order a model restric-  
52 tive covenant for use by any utility corporation, person or entity  
53 entering into contracts or engaging in the sale or trade of select  
54 sulfur dioxide allowance credits. The model restrictive covenants  
55 will be a self enforcing contract that shall include at a minimum,  
56 the requirement to give notice to the department of any sulfur  
57 dioxide allowance transaction covered by the restrictive covenant;  
58 the requirement that any subsequent holders of the sulfur dioxide  
59 allowance covered by the restrictive covenant include an identical  
60 restrictive covenant in any document relating to the sale or pur-  
61 chase of sulfur dioxide allowances; and provisions restricting  
62 usage in acid precipitation source states; and provisions for the  
63 enforcement of the terms of the restrictive covenant by the state of  
64 Massachusetts.

65 Any utility corporation, person or entity entering into contracts  
66 or engaging in the sale or trade of select sulfur dioxide allowance  
67 credits may attach a restrictive covenant as a standard provision in  
68 any document relating to the sale or trade by the utility corpora-  
69 tion, person or entity, its subsidiaries, agents, employees, succes-  
70 sors and assigns, of select sulfur dioxide allowance credits. Such  
71 restrictive covenant must conform with the required provisions of  
72 the model restrictive covenant produced by the department pur-  
73 suant to this subdivision.

74 Any utility corporation, person or entity acting in conformance  
75 with the provisions of this subsection shall be exempt from the  
76 assessment of an air pollution mitigation offset.

77 (d) Nothing contained in this section shall restrict a utility cor-  
78 poration, person or entity owning an electric generating facility  
79 from use or transfer of sulfur dioxide allowances at Massachusetts  
80 facilities owned, controlled or operated now or in the future by the  
81 utility corporation, person or entity owning an electric generating  
82 facility, its successors, assigns or purchasers that come to own,  
83 control or operate such facilities.

84 (e) Nothing in this section shall discourage or prohibit  
85 allowance trades (such as for retirement purposes) that will have a  
86 beneficial impact on sensitive receptor areas in the state of Massa-  
87 chusetts.

88 (f) Nothing within this section will invalidate or subvert any  
89 prior contractual commitments and/or obligations made by a  
90 utility corporation, person or entity identified in subdivision one  
91 of this section prior to the effective date of this section.

92 (g) The commissioner of the department of environmental pro-  
93 tection shall make a written report to the legislature upon his  
94 finding that a federal law has been enacted that will result in at  
95 least a fifty percent reduction in the emissions of sulfur dioxide by  
96 electric generating sources pursuant to Title Four of the Federal  
97 Clean Air Act after full implementation.

1 SECTION 3. Chapter 29 of the General Laws, as appearing in  
2 the 1998 Official Edition, is hereby amended by inserting after  
3 §2VV the following section:—

4 Section 2WW: Air Pollution Mitigation Fund.

5 (a) There is hereby established in the custody of the department  
6 of environmental protection a special fund to be known as the  
7 “Air Pollution Mitigation Fund”.

8 (b) Such fund shall consist of all moneys collected by the  
9 department of environmental protection as an air pollution mitiga-  
10 tion offset pursuant to chapter 111 section 142O. Any interest  
11 earned by the investment of moneys in such fund shall be added to  
12 such fund, become a part of such fund, and be used for the pur-  
13 pose of such fund.

14 (c) Moneys of such fund shall be available to the department of  
15 environmental protection for the purpose of carrying out the pro-  
16 visions of chapter 111 section 142O.

17 (d) The commissioner of the department of environmental pro-  
18 tection shall establish guidelines pertaining to the allocation of  
19 moneys from this fund.

20 (e) The commissioner shall administer the air pollution mitiga-  
21 tion fund established by the department of environmental protec-  
22 tion and consisting of moneys collected by said department as an  
23 air pollution mitigation offset pursuant to chapter 111 section  
24 142O.

25 (f) The commissioner shall disburse moneys from such fund for  
26 the following purposes: (i) to reduce acid precipitation through  
27 energy efficiency, or through public benefit research and develop-  
28 ment, including, but not limited to, renewable energy; or (ii) the  
29 monitoring of, or research related to, the impact of acid precipita-  
30 tion deposit.

1 SECTION 5. *Severability*. The provisions of this act shall be  
2 severable, and if any clause, sentence, paragraph, subdivision or  
3 part of this act shall be adjudged by any court of competent juris-  
4 diction to be invalid, such judgment shall not effect, impair or  
5 invalidate the remainder thereof, but shall be confined in its oper-  
6 ation to the clause, sentence, paragraph, subdivision or part  
7 thereof directly involved in the controversy in which such judg-  
8 ment shall have been rendered.

1 SECTION 6. This act shall take effect immediately.